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EXAMINER

BROCKETTI, JULIE K

ART UNIT

PAPER NUMBER

3713

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/092,119

Applicant(s)

BROWN ET AL.

Examiner

Julie K Brockett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-144 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 49-71 is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-11, 14-26, 33-42, 72, 73, 76-87, 89-107 and 109-144 is/are rejected.
- 7) ☒ Claim(s) 7, 12, 13, 27-32, 43-48, 74, 75, 88 and 108 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the fourth paragraph of 35 U.S.C. 112:

A claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed.

Claims 15-16, 22-23 are rejected under 35 U.S.C. 112, fourth paragraph, as failing to limit the subject matter of a previous claim. Claim 15 states "wherein said starting position for a player's race is the finishing position of said player's racer in the race just completed." Claim 14 on which claim 15 is dependent states "wherein a starting position for a player's racer in said another race is based upon the finishing position of said player's racer in the race just completed." Consequently, claim 15 states an almost identical limitation as claim 14 and henceforth, does not limit the parent claim. Same analysis applies to claims 21 and claim 22.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-5, 8-11, 17-20, 24-26, 33-36, 40-42, 82, 84-87, 89, 92-96, 99-102, 104-107, 109, 112-115, 117, 124, 128 and 130-143 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen, U.S. Patent No. 6,210,275 B1 in view of Breslow et al., U.S. Patent No. 4,710,8731. Olsen discloses a game in which a race is conducted for a video gaming machine. The gaming machine includes a video display, a CPU including a program for driving the display and operating the game (See Olsen Figs. 1 & 5). The game comprises a racetrack, a plurality of racers, a program, i.e. methodology, by which the racers are variously moved about the racetrack (See Olsen Figs. 1 & 5). The program includes a function for randomly assigning a finishing position for racers at the end of a race (See Olsen col. 11 lines 5-16). A player interface is provided with the program for players to input commands. The player selects a racer as the player's racer, i.e. the one they bet on to win the race. A wager is input by the player (See Olsen Fig. 3). A first race is initiated. One racer is eliminated at the end of the race based on a predetermined threshold finishing position (See Olsen col. 4 lines 33-36). The races and eliminations continue until a predetermined-game ending condition occurs, i.e. a player wins the race, and the player has previously placed a wager on another race (See Olsen col. 4 lines 40-42; col. 8 lines 35-37; col. 14 lines 21-30). A payout is then provided based on the number of races completed by the player's racer and the finishing position of the player's racer in each race or a respective race. For example, the player receives a payout based on the finishing position of his selections

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during the race, i.e. if the player selected the top two horses, etc. and the more races that are conducted. For example, the odds change based on how many horses are in the race, which is based on the number of races, conducted. Therefore, the payout is changed based on how many races are run before a winner is determined. Furthermore, the program includes a paytable and the paytable provides increasingly higher payouts for the races completed after the first race. Since the jackpots are progressive, if no one wins in the first race, the money carries over to the second race and the jackpots are increased. (See Olsen table IV). Players may also place a wager on a bonus race. However if that race is not run because of a game-ending event, the wager is lost (See Olsen col. 14 lines 27-30). The game-ending condition occurs when a predetermined number of racers equals a predetermined number of finishing places for which a payout is provided. For example, when a player wins the race, i.e. the horse they bet on wins, the game ends (See Olsen col. 7 lines 34-35). The game may be played with a plurality of players who are jointly participating in the race and each of the aforementioned limitations may be applied to multiple players (See Olsen Fig. 1). It is inherent to the system of Olsen that a machine CPU includes a machine program for driving said display and interacting with the game. Furthermore, Olsen discloses a network interlinking each of the gaming machines of all the players participating in the game and a master program operating the game so that each display has the raceway depicted on it and each race is run substantially simultaneously on

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each display. Furthermore it is inherent that each machine cpu includes the master program and the master program of a first player's machine operates all other machines' displays participating in a race. The master program is embodied in a central CPU, which is separate from the machine CPU. The machines that are interlinked on the network are within the line of sight with each other. The gaming machine further has a video display with a display screen upon which the game is played that is visible to a plurality of players and a cpu including a program for driving the display and operating the game and a plurality of player command input mechanisms interfacing with the cpu. The race game also includes a central video display having a display screen upon which the game is played and which is visible to a plurality of players (See Olsen Figs. 1 & 5; col. 5 lines 54-61). The Examiner further notes that as stated in Olsen, the nature and design of a controller, network, and linked gaming machines are all well known throughout the art; furthermore, the aforementioned limitations with regards to the master program and cpu are inherent to the invention of Olsen. The Examiner further acknowledges that it is inherent that in the process of inputting information by the player, the information is registered with the CPU. Olsen lacks in stating that play is continued with another race provided that a player's racer has not been eliminated.

Breslow et al. teaches of a video game in which player's racecars in a parking lot. The raceway is a vehicular racetrack and the racer is a motor

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vehicle (See Breslow Fig. 4d). A car is eliminated after each race and play is continued with another race provided that the player's racer has not been eliminated (See Breslow et al. col. 4 lines 53-67; col. 5 lines 1-2). It would have been obvious at the time the invention was made to continue on with additional races as long as the player's racer has not been eliminated. By including multiple rounds of play, a player has increased chances of winning the overall game. The more rounds played, the greater satisfaction a player feels in playing the game and paying for it. Breslow further teaches of providing a payout in terms of a score based upon the number of races completed by the player's racer and the finishing position of the player's racer in each race. For example, the faster a player pulls into a parking spot, the lower their score, i.e. payout (See Breslow col. 4 lines 58-63). Furthermore, one racer is eliminated as a result of a predetermined threshold finishing position required at the end of a race and play continues with another race until one of the following occurs constituting a game-ending criterion: the player's racer has been eliminated or a predetermined number of races have been completed or run. Furthermore the game-ending condition can be that the number of racers, inclusive of the player's racer is below a predetermined number, i.e. that only one racer is left (See Breslow col. 4 lines 53-67; col. 5 lines 1-2). It would have been obvious at the time the invention was made to have a game-ending condition based on the number of races completed or the number of racers in the race. It is well known in competition to have a preset

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number of races so that players know in advance how many races are possible, this allows the players to determine an optimal strategy for game play based on knowing how many games may be required.

Claims 6, 14-16, 21-23, 37-39, 83, 90, 91, 97, 98, 110, 111, 116, 125 and 129 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen in view of Breslow et al. in further view of Atari's "Pole Position". Olsen and Breslow lack in disclosing an explosive destruction sequence. The game "Pole Position" teaches of a raceway which is a vehicular racetrack and the racer is a motor vehicle. Furthermore, race cars exploding upon contact with another car (See "Pole Position pg. 3 "Smashups"). It would have been obvious at the time the invention was made to eliminate a racer through an explosive destruction sequence executed at the end of the race. Pole Position does not eliminate a racer when the car explodes; however, this is an obvious feature to employ. Player's enjoy the visually stimulating graphics in the games. Therefore, in order to notify a player that a certain racer has been eliminated it is obvious to initiate a visually stimulating explosive sequence to grasp a player's attention. "Pole Position" also teaches of a race game wherein the starting position for a player's racer in another race is based on the finishing position of the player's racer in the race that was just completed or the starting position of a player's racer is the finishing position of the player's racer in the race just completed. For example, a qualifying lap is conducted and based on the player's finishing time in that lap it is determined what the starting position for a player's racer



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in the next race will be. If a player finishes in the pole position, that is the position in which they will start the next race (See "Pole Position pg. 2). It would have been obvious at the time the invention was made to have the player's start the next race in the position that they finished the last race. This way the better racers gain the advantage of the better racing positions along the track. It is well known throughout the art to award racers who do well in qualifying races with better positioning in later races. This encourages all racers to do their best in every race.

Claims 72, 73, 76-79, 118-121 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen in view of Breslow et al. in further view of Glavich, U.S. Patent No. 6,309,300 B1. Olsen and Breslow lack in disclosing entering a bonus round when the player's racer is the last remaining racer at the end of the race. Glavich teaches of a gaming bonus machine. In the bonus round, the player selects at least one of a plurality of bonus items, where each bonus item has a value associated with it, which is revealed upon selection of the bonus item (See Glavich col. 3 lines 58-61; col. 4 lines 44-52). Bonus games are very well known throughout the art as a game level, which occurs after a player, has already accomplished a difficult task. It would have been obvious at the time the invention was made to have the game player in the games of Breslow and Olsen enter into a bonus round when they have accomplished the task of being the last remaining racer at the end of the race. Consequently, they receive a bonus for being the winner of the primary game.

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Bonuses are very popular among game players and are an added incentive to play the primary game, thus making the game more profitable to the game owner. Therefore, it would have been obvious at the time the invention was made to include the bonus game of Glavich into the inventions of Breslow or Olsen so that a player may select a bonus prize for being the winner of the primary game, thereby increasing player satisfaction and interest in the game.

Claims 80, 81, 122, 123, 126 and 127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen in view of Breslow et al. in further view of Atari's "Jungle King". Olsen and Breslow lack in disclosing a swimming area. The 1982 Atari Game "Jungle King" teaches of a race game in which there is a swimming area and the character is a swimmer. The swimmer can be eliminated, i.e. killed, in a sequence depicting a sea creature eating the swimmer (See Arcade Fever pg. 99). It would have been obvious at the time the invention was made that one could use the character of a swimmer racing in the inventions of Olsen and Breslow. Not all people enjoy car racing, consequently, for a game to appeal to more people, it is obvious to utilize the fundamental game concepts such as a race, with other types of characters including swimmers. Therefore, more people would be attracted to the game and it will be more profitable to the inventor.

Claim 103 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen in view of Breslow et al. in further view of Falciglia, U.S. Patent No. 5,971,849. Olsen and Breslow both lack in disclosing message input

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capability. Falciglia teaches of a gaming device in which the player input mechanism includes a message input capability and the master program reproduces the message on displays of other players participating in the game (See Falciglia Fig. 7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include messaging capability in the inventions of either Breslow or Olsen. Messaging allows players to keep in communication with their friends while playing the game. Consequently, they do not have to worry about missing an important message while spending time playing the game.

***Allowable Subject Matter***

Claims 49-71 are allowed over the prior art of record.

Claims 7, 12, 13, 27-32, 43-48, 74, 75, 88 and 108 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not teach of a racing game in which a player's wager includes an input as to the number of consecutive races desired to be completed up to a preset maximum number for the game. The prior art only discloses wagering on one race at a time, not a number of races in sequential order.

### ***Citation of Relevant Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. Slomiany et al., U.S. Patent No. 6,612,927 B1.

--Slomiany et al. discloses a multi-state multi-bet game.

2. Walker et al., U.S. Patent No. 5,779,549.

--Walker et al. discloses a tournament system in which multiple rounds of play occur.

3. Markowicz et al., U.S. Patent No. 5,938,200.

--Markowicz et al. discloses a wagering game of chance in which racecars race to the finish line based on random number selection.

4. Prather et al., U.S. Patent No. 5,823,872.

--Prather et al. discloses a simulated racing game in which players race around a track based on a random number distribution.

### ***Conclusion***

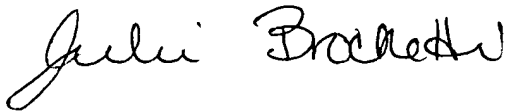
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K Brockett whose telephone number is 703-308-7306. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg SPE can be reached on 703-308-1327.

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The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the customer service office whose telephone number is 703-306-5648.

A handwritten signature in cursive script, reading "Julie Brockett".

Julie Brockett  
Examiner  
Art Unit 3713  
September 15, 2003